Supreme Court, U.S.
FILED

OCT 20 2010

OFFICE OF THE CLERK

No. 10-874

In The

Supreme Court of the United States

Clive A. Sherwood,

Petitioner

v.

Department of the Treasury
Internal Revenue Service
United States
Treasury Secretary, Timothy Geithner
Mary Hannah, IRS Operations Manager, Collection
Commissioner of Internal Revenue Service
MTA-NYCTA
Hallum Abdelhack
Richard Dreyfus

Respondents

On Petition For Writ Of Certiorari
To The United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

Clive Sherwood
Pro Se
144-44 226 Street
Springfield Gardens, NY 11413
(347) 206-4312

Question Presented for Review

Did the Appeals Court err in determining that the Sixteenth Amendment removed the apportionment requirement for a direct tax in the general constitutional sense, I have stated to the Court that as a Natural Person, domiciled within the State of New York my wages being taxed, amounts to a direct tax in the general Constitutional sense, and wouldn't such a tax required to follow the Constitutional requirements of Article 1, Section 2, Clause 3 and also Article 1, Section 9, Clause 4. As a Natural Person aren't my rights protected under the Constitution of the United States of America, isn't it stated in Article VI that the Constitution and all laws made pursuance thereof, shall be the supreme law of the land, is it not fact that under the Constitution, I am afforded the right to due process of the law when personal property is being seized?

CORPORATE DISCLOSURE STATEMENT

The Petitioner in this lawsuit is not a member of any Corporation, public or private, nor does he own 10 percent of stock in any corporation which in any way is a party to this suit.

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JURISDICTION ON WRIT OF CERTIORARI

1. Within Rule 10(c) of the Supreme Court of the United States, a United States court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this court.

CONSTITUTIONAL PROVISIONS INVOLVED

1. Article 1, Section 8, Clause 1, states that
" The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States."
This article gives Congress the right to impose tax but with restrictions.

2. The 16th amendment (1913) states, "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census of enumeration." being an amendment to Article 1, Section 8, Clause 1, The amendment has now made the Article more restrictive by the word income being added.

3. Article 1, Section 2, Clause 3, "Representatives and direct taxes shall be apportioned among the several states which may be included within this union....." this article regulated the manner a direct tax could be imposed and should the tax be a direct tax, such tax would need to be apportioned.

4. Article VI of the Constitution of the United States of America states that, " This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." So if a statute is not made pursuant to the Constitution, it is obvious that statute becomes void in its operation.

5. The fourth amendment (1791) "The right of The people to be secure in their persons, house, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." As a person protected by this amendment anyone that violates this process has violated my rights.

6. The fifth amendment (1791) " No person
Shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

As a person who is protected by the above amendment, anyone who violates this process, is depriving me of due process of law and has violated my rights.

7. The seventh amendment (1791), " In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise reexamine in any court of the United States, than according to the rules of the common law."

As a Constitutional provision wouldn't it be right to say that this amendment takes precedence to any regulation or law that denies this right.

STATEMENT OF FACTS

1. A petition was filed in United States District Court Eastern District of New York, on January 12, 2009, this complaint was filed as a violation of civil and constitutional rights, it was the taking of property by trespass and violation of due process of law. This case was not a refund case, it was stated by petitioner that though the federal income tax is constitutional it was being applied not as indirect tax, but as a direct tax in the general constitutional sense. The case was dismissed on February 05, 2009, by District Judge KIYO A. MATSUMOTO, who stated she did not understand my argument and in the process denied me a jury trial.

2. A Notice of Appeal was filed on April 06, 2009.

3. A Brief was filed with the United States Court of Appeals for the Second Circuit on or before June 25, 2009.

4. Appellant received an oral argument for September 2009.

5. A summary order was issued on March 23, 2010 affirming District Courts' order of dismissal, and with the erroneous contention of the appeals court, I had to request a rehearing in En Banc submitted on May 05, 2010, which was denied on July 23, 2010.

JURISDICTION IN COURT OF FIRST INSTANCE

1. Jurisdiction of the District Court was granted under 28 U.S.C. 1331," The District Courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. 1291 "The courts of appeal.....shall have jurisdiction of all appeals from all final decision of the district courts of the United States."

APPENDIX.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 23rd day of July, two thousand and ten.

Clive Arnel Sherwood,

Plaintiff-Appellant,

Clive Arnel Sherwood, Jr.,

Plaintiff,

-v-

Department of Treasury, Internal Revenue Service, United States, Treasury Secretary Timothy F. Geithner*,Mary Hannah, IRS Operation Manager, collection, Commissioner of Internal Revenue Service ,MTA-NYCTA, Hallum "Allan"

United States Court of Appeals
Filed
JUL 23 2010
Catherine O'Hagan Wolfe, Clerk
Second Circuit

Docket No.09-1405-cv

Abdelhack, Richard Dreyfus,

Defendants-Appellees.

Clive Sherwood, having filed a petition for panel rehearing, or, in the alterative, for rehearing en banc, and the panel that determining the appeal having considered the request for panel rehearing, and the active members of the Court having considered the request for rehearing in en banc,

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

United States
Second
Circuit
Court of Appeal
S/ Catherine O'Hagan Wolfe, Clerk

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* Pursuant to Federal Rule of Appellate Procedure 43 (c)(2), Secretary of the Treasury Timothy F. Geithner is automatically substituted for former Secretary of the Treasury Henry M. Paulson, Jr., as a defendant in this case..

09-1405-cv
Sherwood v. Department of the Treasury

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

Ruling by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by federal rule of Appellate Procedure 32.1 and this courts local rule 32.1.1. When citing a summary order in a document filed with this court, a party must cite either the federal appendix or an electronic data base (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the city of New York, on the 23 day of March, two thousand and ten.

PRESENT: PIERRE N. LEVAL,
ROBERT D. SACK
RICHARD C. WESLEY
Circuit Judges.

United States Court Of Appeal
Filed
MAR 23 2010
Catherine O'Hagan Wolfe, Clerk
Second Circuit

Clive Arnel Sherwood,

Plaintiff-Appellant,

Clive Arnel Sherwood, JR.,

Plaintiff,

- v.- 09-1405-cv

Department of Treasury, Internal Revenue Service, United States, Treasury Secretary Timothy F. Geithner*,Mary Hannah, IRS Operation Manager ,collection, Commissioner of Internal Revenue Service ,MTA-NYCTA, Hallum "Allan" Abdelhack, Richard Dreyfus,

Defendants-Appellees.

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* Pursuant to Federal Rule of Appellate Procedure 43 (c)(2), Secretary of the Treasury Timothy F. Geithner is automatically substituted for former Secretary of the Treasury Henry M. Paulson, Jr., as a defendant in this case.

For Appellant: Clive Arnel Sherwood, pro se
Springfield Gardens, NY.

For Appellees: No Appearances.

Appeal from the United States District Court for the Eastern District of New York (Matsumoto, J.).

Upon due consideration, it is hereby ORDERED, Adjust and decreed that the judgment of said district court be AFFIRMED.

Appellant Clive Arnel Sherwood appeals from a judgment of the United States District Court for the Eastern District of New York (Matsumoto, J.), which dismissed sua sponte his complaint challenging a levy allegedly placed on his wages by the Internal Revenue Service. We assume the parties' familiarity with the underlying facts, the procedural history, and the issues presented for review.

Pursuant to 28 u.s.c. §(e) (2) (B), a court must dismiss a complaint by a litigant proceeding in forma pauperis if, inter alia, the court determines that it is frivolous or fails to state a claim upon which relief may be granted. We conduct de novo review for both ground of the district court's sua sponte dismissal.

See Giano v. Goord, 250 F. 3d 146, 149-50 (2d Cir. 2001) (dismissal pursuant to § 1915 (e) (2) (B)); see

also Maloney v. Soc. Admin., 517 F. 3d 70, 74 (2d Cir. 2008) (per curiam) (dismissal pursuant to an absence of subject matter jurisdiction).

We affirm for substantially the same reasons stated by the district court in it memorandum and order. Even liberally construing his pro se complaint, Sherwood's substantive claims are frivolous. Contrary to Sherwood's contentions, the federal income tax is constitutional, wages are taxable income, and the Sixteenth Amendment removed the apportionment for direct taxes. See e.g., Ficalora v. Comm'r of Internal Revenue, 751 F. 2d 85,87 (2d Cir. 1984); Connor v. Comm'r of Internal Revenue, 770 F 2d 17, 20 (2d Cir. 1985) (per curiam). Sherwood also alleges that the proper procedures for placing a levy on his wages were not followed, but there is no indication that he exhausted his administrative remedies as required with respect to this claim, and the district court therefore properly dismissed this claim. See 26 U.S.C. §§ 7422, 7429; see also Wapnick v. United V States, 112 f. 3d 74, 75 (2d Cir.1997) (per curiam); United States v. Dalm, 494 U.S. 596, 601-02 (1990).

We have considered Sherwood's remaining arguments and conclude that they are without merit.

For the forgoing reasons, the judgment of the district court is hereby AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk
United States
Second Circuit
Court Of Appeal
s/ Catherine O'Hagan Wolfe, Clerk

MEMORANDUM AND ORDER

09-CV-228 (KAM)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Clive Arnel Sherwood,

Plaintiff

-v-

Memorandum
and Order

09-CV-227 (KAM)

Department of Treasury, Internal
Revenue Service,United States,
Treasury Secretary Timothy F.
Geithner*,Debra Hurst, IRS Operation
Manager, collection, Commissioner
of Internal Revenue Service ,
MTA-NYCTA, Hallum "Allan"
Abdelhack, Richard Dreyfus,

Defendants

----------x

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Clive Arnel Sherwood,
Clive Arnel Sherwood,Jr.

09-CV-228 (KAM)

Plaintiffs

-v-

Department of Treasury, Internal Revenue Service,United States, Treasury Secretary Timothy F. Geithner*,Mary Hannah, IRS Operation Manager, collection, Commissioner of Internal Revenue Service , MTA-NYCTA, Hallum "Allan" Abdelhack, Richard Dreyfus,

Defendants

----------x

MATSUMOTO, United States District Judge

Plaintiff brings these two actions pursuant to 28 U.S.C. § 1331. The Court grants plaintiff's application to proceed in forma pauperis pursuant to 28 U.S.C. § solely for the purpose of this order, and dismisses both of the complaints for the reasons stated below.

BACKGROUND

Clive Arnel Sherwood, an employee of the Metropolitan Transit Authority (MTA), brings these alleging that he is a "a private person who does not earn income within the meaning of the 16th Amendment," (Case No. 09-CV-227, Doc. 1: Complaint at 2.) Moreover, plaintiff alleges that since he does not earn "income in the constitutional sense" he should not have to pay income tax.(Id.) Although the basis for plaintiff's argument is unclear, plaintiff seems to allege that under the Sixteenth Amendment, corporations must pay income taxes but individuals need not. (See Case No. 09-CV-228, Doc. 1: Complaint at 2.)

In September 2006, the Internal Revenue Service sent a notice of levy to the MTA to garnish plaintiff's wages. (Id. At 2, ¶ 8.) Plaintiff alleges that the MTA should not have complied with the notice of levy. Plaintiff seeks the following remedies from the Court: (1) "Permanent Relief from submitting a W-4 form, because the law does not require Congress to lay or collect tax on the source and wages or salary earned by a private individual"; (2) damages in the amount of fifty million dollars from the United States government; (3) damages in the amount twenty million dollars from the New York City Transit Authority; (4) to recover money illegally collected by the Internal Revenue Service. (Id. At 5.)

Parties

The Court notes that in 09-CV-228, Clive Arnel Sherwood ("Sherwood") and Clive Arnel Sherwood, Jr. ("Sherwood Jr.,") are both listed as plaintiffs. Because the complaint was not signed by Sherwood Jr., and there was no separate in forma pauperis application for Sherwood Jr., the complaint shall proceed as to Clive Arnel Sherwood as the sole plaintiff.[1] In addition, to the extent that Clive Arnel Sherwood seeks to bring this action on behalf of his child without representation by counsel, he may not do so. See, e.g., Tindall v. Poultney High Sch. Dist., 414 F.3d 281, (2d Cir. 2005) ("It is thus a well-established general rule in this Circuit that a parent not admitted to the bar cannot bring an action pro se in federal court on behalf of his or her child.").

STANDARD OF REVIEW

In reviewing plaintiff's complaints, the Court is mindful that because plaintiff is proceeding pro se, his submissions should be held "to less stringent standards than formal pleadings drafted by lawyers." Hughes v. Rowe, 449 U.S. 5, 9 (1980) (citation omitted); McEachin v. McGuinnis, 357 F.3d 197, 200 (2d Cir. 2004). However a district court shall dismiss an in forma pauperis action where the court is satisfied that the action"(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief."

28 U.SC. § 1915(e) (2)(B). An action is frivolous when "the factual contentions are clearly baseless, such as when allegations are product of delusion or fantasy" or based upon "an indisputable meritless legal theory." Livingston v. Adirondack Beverage Co., 141 F. 3d 434, 437 (2d Cir. 1998) (quotations and citations omitted).

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[1] It is unclear, whether Sherwood Jr., is the same person as Sherwood or if he is plaintiff's child and/ or a minor. The Court notes that minors may not represent themselves in this action and must have an attorney bring the action on their behalf, as minors may not proceed pro se. Cheung v. Youth Orchestra Found. Of Buffalo, Inc., 906 F.2d 59, 61 (2d Cir. 1990) ("The choice to appear pro se is not a true choice for minors who under state law, see Fed. R Civ P 17(c), cannot determine their own legal actions.").

DISCUSSION

The Sixteenth Amendment provides: "The Congress shall have the power to lay and collect taxes on incomes , from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." U.S. Const. amen. XVI. There is "no question but that Congress has the constitutional authority to impose an income tax." Allamby v. United States, 85 Fed. Appx. 784, 786 (2d Cir. 2004); see also United States v. Carley, 783 F. 2d 341, 344 (2d Cir.1986). Moreover, there is no question that wages are taxable income. See Ficalora v. Comm'r of Internal Revenue, 751 F.2d 85, 87 (2d Cir. 1984); Springer v. IRS, No. 05-CV-4203, 2006 WL 2641658 (E.D.N.Y Aug.2, 2008). "[T]he payment of income tax is not optional... and the average citizen knows that the payment of income taxes is legally required." United States v. Schiff, 876 F.2d 272, 275 (2d Cir. 1989). Accordingly, plaintiff's argument that a tax on his income is a violation of his constitutional rights is unavailing.

To the extent that plaintiff seeks to challenge the levy on his wages, 26 U.S.C. § 7429 outlines the proper procedures. Before a plaintiff may bring an action under § 7429(b), the administrative procedure set forth in § 7429(a) must be followed. Under § 7429(a), the Secretary of the Treasury("the Secretary") must provide the taxpayer, within five days after assessment, with written statement of the information relied on in making the assessment. 26 U.S.C. § 7429(a)(1)(B). A taxpayer may

request, within 30 days of receiving the written statement required in § 7429(a)(1), or "within 30 days after the last day of the period within which such statement is required to be furnished," that the Secretary review the administrative action taken. 26 U.S.C. § 7429(a)(2).

Before a taxpayer may seek judicial review of an assessment in district court under 26 U.S.C. § 7429(b), two procedural requirements must be met. First, plaintiff must have filed a request for administrative review. Second, plaintiff must have filed his civil case within either 90 days of determination by the Secretary, or the 16th day after filing a request for review, whichever is earlier. 26 U.S.C. § 7429(b)(1). In the instant case, plaintiff offers no evidence that he has filed a request for administrative review. See Wapnick v. United States, 112 F.3d 74, 75 (2d Cir. 1997) (district court did not have subject matter jurisdiction over complaint challenging jeopardy assessment by taxpayer who failed to seek administrative review). Consequently, the court lacks subject matter jurisdiction over plaintiff's actions.

CONCLUSION

The court finds that plaintiff's complaints are frivolous, lack any basis in law, and that the court lacks subject matter jurisdiction. The court therefore orders that the complaints be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B). The court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be

taken in good faith and therefore in forma pauperis status is denied for purposes of any appeal. Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: Brooklyn, New York
February 5, 2009

s/ Kiko A. Matsumoto
KIKO A. MATSUMOTO
United States District Judge

The District Court dismissed complaint pursuant 28 U.S.C. § 1915(e) (2) (B), and the appeal court as much as stated that the 16th amendment removed the requirement for apportionment for a direct tax, but I don't know why it was in their interest to omit the word income off the statement.

The Court stressed the fact that my argument that imposing of a direct tax in the general constitutional sense on wages is a frivolous argument, as cited, Eisner v. Macomber, 252 U.S. 189 (1920), U.S. 205-207, page 252 U.S. 205 "The Sixteenth Amendment must be construed in connection with the taxing clause of the original Constitution and the effect attributed to them before the amendment was adopted. In Pollack v. Farmers' Loan & Trust Co., 158 U.S. 601, under the Act of August 27, 1894, c. 349, § 27, 28 Stat. 509, 553, it was held that taxes upon rents and profits of real estate and upon returns from investments of personal property from which such income arose, imposed by reason of ownership, and that congress could not impose such taxes without apportioning them among the states according to population, as required by Article I, § 2, cl. 3, and § 9, cl. 4, of the original Constitution.

Afterwards, and evidently in recognition of the limitation upon the taxing power of Congress thus determined, the Sixteenth Amendment was adopted, in words lucidly expressing the objecting to be accomplished: " The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without

apportionment (page 252 U.S. 206) the several states and without regard to any census or enumeration." "As repeatedly held, this did not extend the taxing power to new subjects, but merely removed the necessity which otherwise might exist for an apportionment among the states of taxes laid on income. Brushaber v. Union Pacific R. Co., 240 U.S. 1, 240 U.S. 17-19; Stanton v Baltic Mining Co., 240 U.S. 103, 240 U.S. 112," but all these cases have made it clear that the constitutional regulations to direct and indirect taxation still applies, apportionment to direct tax and uniformity to indirect tax.

CERTIFICATE OF COMPLIANCE

No.

Clive A. Sherwood,

Petitioner

v.

Department of the Treasury
Internal Revenue Service
United States
Treasury Secretary, Timothy Geithner
Mary Hannah, IRS Operations Manager, Collection
Commissioner of Internal Revenue Service
MTA-NYCTA
Hallum Abdelhack
Richard Dreyfus

Respondents

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contain 3961 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 26, 2010

Clive A. Sherwood